



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

Wright

September 20, 1977

Robert J. Roberson, Esq.
Deputy Yuma County Attorney
Post Office Box 1048
Yuma, Arizona 85364

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 77-184 (R77-30)

Dear Mr. Roberson:

We have reviewed your January 24, 1977 opinion addressed to Virginia K. Smith, Business Manager for Yuma School District No. 1, concluding that the school district can legally ask for identification of ethnic background on student registration and employee application forms. The Attorney General concurs with your opinion, but, as will become evident from the following discussion, strongly recommends against requesting ethnic information on employment application forms or student registration forms. Such information should be obtained after employment and after registration.

42 U.S.C. § 2000.e.2(a) declares that:

(a) It shall be an unlawful employment practice for an employer--

* * *

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.

This precise language was adopted in A.R.S. § 41-1463.B, as a portion of the Arizona Civil Rights Act.

Though the statutory provisions do not specifically prohibit pre-employment inquiries seeking information concerning an applicant's race, color, religion, sex or national origin, such pre-employment inquiries have been found unlawful if used as the basis of an adverse employment decision. Ostapowicz v. Johnson Bronze Co., 369 F.Supp 522 (D.C. Pa. 1973).

Robert J. Roberson, Esq.

September 20, 1977

Page Two

The United States Equal Employment Opportunity Commission, by regulation, has determined that such pre-employment inquiries frequently bear no demonstrable relationship to a job applicant's ability or qualification as an employee and, consequently, serve no lawful purpose, except in the case of a "bona fide occupational qualification." See 29 C.F.R. § 1602, et seq., Pre-hire Inquiries.

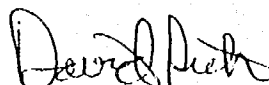
Inasmuch as an applicant's race, color, religion, sex and national origin are irrelevant for employment purposes, the only reason to request such information is to comply with the record-keeping requirements of A.R.S. § 41-1482. Subparagraph A of that section requires every employer "to keep and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed. . . ." Subparagraph A further provides that "compliance with reporting and record keeping regulations issued by the United States equal employment opportunity commission shall be in compliance with this subsection." The EEOC regulation allowing the recording of racial and ethnic identity of employees provides that such information may be obtained by:

. . . [V]isual surveys of the work force, or at their option, by the maintenance of post-employment records as to the identity of employees where the same is permitted by State law. In the latter case, however, the Commission recommends the maintenance of a permanent record as to the racial or ethnic identity of an individual for purpose of completing the report form only where the employer keeps such records separately from the employee's basic personnel form or other records available to those responsible for personnel decisions. . . . 29 C.F.R. § 1602.13. (Emphasis added.)

Permissible records categorizing employees by racial and other categories may be prepared only after employment or registration. In conclusion, since a direct question regarding a person's race, color, religion, sex or national origin on an employment application could be interpreted as a request for information which tends to discriminate, it should not be used. This conclusion applies equally to questions asked on student registration forms.

Sincerely,

BRUCE E. BABBITT
Attorney General



DAVID RICH
Assistant Attorney General

DR:jrs